

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
Petition of Qwest Corporation for)	WC Docket No. 04-416
Forbearance Pursuant to 47 U.S.C. § 160(c))	
Pertaining to Qwest's xDSL Services)	
)	

COMMENTS OF FSM MARKETING GROUP, INC.

Introduction

The Commission has before it a number of pending proceedings, which could potentially deregulate the ILECs' provision of xDSL services. The Commission is considering whether ILECs should be subject to dominant carrier regulation in their provision of DSL.ⁱ The Commission is also considering whether access to the Internet over DSL should be regulated under Title I or Title II.ⁱⁱ Qwest claims that both of the proceedings have been pending for over two years and are being ignored. In a recent petition, BellSouth filed seeking forbearance from all Title II and Computer Inquiry regulation.ⁱⁱⁱ

Qwest and their BOC counterparts are overloading the Commission with frivolous and numerous motions and petitions, which we believe is an attempt to cause the Commission to potentially make hastened decisions. The Commission

is so over loaded with the multitude of petitions, motions and comments that the Commission has on occasions, exercised its authority to extend on rulings.^{iv} If this is the case, then this and other petitions like it should be dismissed with prejudice.

Common Carriage and Computer II - Essential Facilities

Common carriage and Computer II obligations were put into place to provide open access and competitive products and services for businesses and consumers. Tens of thousands of businesses and millions of consumers benefit from the freedom of choice for Internet access. Are we to deny such freedom in a democracy whose very foundation is that of freedom of choice? If the answer is no, then the dismissal of the Qwest petition is precedent in accordance of law.

The BOCs have disenfranchised their competitors via regulatory capture, wanting to cut their ISP customers off completely. Is it possible to consider this petitions as an act of restricting trade? It is of our opinion that the granting of this petition and others of similar essence may provide for imminent antitrust actions. It is agreeable, that antitrust laws should only apply to market providers dominating the essential facilities of the local exchange and potential creation of a monopoly.

Competitive Innovation

It can not be stressed enough that the Internet was brought to the public from the collaborative works within the halls of academia, private enterprises and the

entrepreneurial efforts of ISPs. Through these dedicated and courageous individuals, the economic growth of this nation has exploded. No where in history can it be shown that the use of existing technology was rebirth into a new dimension, creating thousands of new businesses and tens of thousands of new employment opportunities. The economic benefits have been astounding.

ISP's can account for millions of customers using the Internet and providing for the creation of new and exciting innovations that have enhanced the quality of life beyond ones imagination. The BOCs can not account for such accolades.

In closing and in behalf of our customers, FSM Marketing Group requests that the Commission dismiss with prejudice the Qwest Petition for Forbearance pertaining to Qwest xDSL services.

Any other choice by the Commission, would cause irreparable harm to many ISPs, CLECs, Telecommunication Specialist and affiliates around the country, especially small businesses and consumers, and would harm the public by taking away the freedom of choice, that even the Commission can not deny in its own views.

Respectively Submitted,

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Chairman / President

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ⁱ *In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22754 (2001).

ⁱⁱ *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002).

ⁱⁱⁱ *Petition of BellSouth Telecommunications Inc. for Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and Title II Common Carriage Requirements* (filed October 27, 2004). And see, Public Notice, WC Docket No. 04-405, DA 04-3507, rel. Nov. 3, 2004.

^{iv} *Order Extends Qwest's Petition for Forbearance Under 47 U.S.C. Sec. 160(c) from the Application of Section 271*. WC Docket No. 03-260; DA 04-3845, rel. 12/07/2004. 12/07/04 And see, *Order Extension of the Petition of SBC for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*. WC Docket No. 04-29, DA 04-3844, rel. 12/07/2004 And see, *Order: SBC's Extension of Petition for Forbearance Under 47 U.S.C. 160(c) from Application of Section 271* WC Docket No. 03-234, DA 04-3532, rel. 11/05/2004